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8 NGA INVESTMENT, LLC,  
9 Plaintiff,  
10 v.  
11 REUBEN BERONILLA, MARIA V.  
12 BERONILLA, and DOES 1-5, inclusive,  
13 Defendants.

14 Case No. 5:14-cv-01842 HRL  
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**ORDER THAT CASE BE REASSIGNED  
TO A DISTRICT JUDGE**

**ORDER FINDING AS MOOT  
APPLICATION TO PROCEED IN  
FORMA PAUPERIS**

**REPORT AND RECOMMENDATION  
RE REMAND TO STATE COURT**

18 On April 22, 2014, defendants Reuben and Maria Beronilla purported to remove this  
19 unlawful detainer action from the Santa Clara County Superior Court. They also seek leave to  
20 proceed in forma pauperis (IFP). For the reasons stated below, the undersigned deems the IFP  
21 application moot and recommends that this matter be remanded.  
22

A court may authorize the commencement of a civil action in forma pauperis (“IFP”) if the  
court is satisfied that the applicant cannot pay the requisite filing fees. 28 U.S.C § 1915(a)(1). In  
evaluating such an application, the court should “gran[t] or den[y] IFP status based on the  
applicant’s financial resources alone and then independently determin[e] whether to dismiss the  
complaint on the grounds that it is frivolous.” Franklin v. Murphy, 745 F.2d 1221, 1226-27 n.5  
(9th Cir. 1984). A court may dismiss a case filed without the payment of the filing fee whenever it  
determines that the action “(i) is frivolous or malicious; (ii) fails to state a claim on which relief

1 may be granted; or (iii) seeks monetary relief against a defendant who is immune from such  
2 relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). Here, only Reuben Beronilla filed a financial affidavit,  
3 which this court finds ambiguous. In it, he indicates that he currently is employed, but fails to  
4 provide his gross and net salary information. (Dkt. 2 at 1). He goes on, however, to suggest that  
5 the date of his last employment was October 13, 2013. (*Id.* at 2). Additionally, although  
6 Beronilla’s application indicates that the instant action does not raise claims that have been  
7 presented in other lawsuits, the court’s records reflect that this is the second time the Beronillas  
8 have removed the same unlawful detainer action here.<sup>1</sup> Under different circumstances, this court  
9 might require Reuben Beronilla to re-submit a complete application and to require Maria Beronilla  
10 to file a separate financial affidavit. Here, however, defendants’ IFP application is deemed moot  
11 because, for the reasons discussed below, this court concludes that there is no federal subject  
12 matter jurisdiction anyway.

13 Removal to federal court is proper where the federal court would have original subject  
14 matter jurisdiction over the complaint. 28 U.S.C. § 1441. The removal statutes are strictly  
15 construed against removal and place the burden on the defendant to demonstrate that removal was  
16 proper. Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009) (citing Gaus  
17 v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)). Additionally, the court has a continuing duty to  
18 determine whether it has subject matter jurisdiction. Fed. R. Civ. P. 12(h). A case must be  
19 remanded to the state court if it appears at any time before final judgment that the court lacks  
20 subject matter jurisdiction. 28 U.S.C. § 1447(c).

21 Defendants fail to show that removal is proper based on any federal law. Federal courts  
22 have original jurisdiction over civil actions “arising under the Constitution, laws, or treaties of the  
23 United States.” 28 U.S.C. § 1331. A claim “arises under” federal law if, based on the “well-  
24 pleaded complaint rule,” the plaintiff alleges a federal claim for relief. Vaden v. Discovery Bank,

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26 <sup>1</sup> See Case No. 5:14-cv-01357 PSG, *NGA Investment, LLC v. Beronilla*. The Beronillas filed the  
27 instant action while plaintiff’s motion for remand was pending in the earlier-filed case. The  
earlier-removed action has since been remanded to state court. (See Case No. 5:14-cv-01357, Dkt.  
11 Order Remanding Case).

1 129 S. Ct. 1262, 1272 (2009). Defenses and counterclaims asserting a federal question do not  
2 satisfy this requirement. Id. Here, plaintiff's complaint presents a claim arising only under state  
3 law. It does not allege any federal claims whatsoever. Allegations in a removal notice or in a  
4 response to the complaint cannot provide this court with federal question jurisdiction.

5 Nor does this court find any basis for diversity jurisdiction. Federal district courts have  
6 jurisdiction over civil actions in which the matter in controversy exceeds the sum or value of  
7 \$75,000 (exclusive of interest and costs) and is between citizens of different states. 28 U.S.C.  
8 §1332. The complaint indicates that the amount demanded does not exceed \$10,000. And, the  
9 record presented indicates that defendants are California citizens. (See Dkt. 1-1, Section III). An  
10 action may not be removed on the basis of diversity "if any of the parties in interest properly  
11 joined and served as defendants is a citizen of the State in which such action is brought." 28  
12 U.S.C. § 1441(b)(2); see also *Spencer v. U.S. Dist. Ct.*, 393 F.3d 867, 870 (9th Cir. 2004) ("It is  
13 thus clear that the presence of a local defendant at the time removal is sought bars removal.").

14 There being no basis for federal jurisdiction over plaintiff's unlawful detainer action, the  
15 removal of this case was improper. Moreover, as noted above, this is defendants' second attempt  
16 to remove the same action here. Defendants are advised that future attempts to remove this matter  
17 may result in sanctions.

18 Because the parties have yet to consent to the undersigned's jurisdiction, this court  
19 ORDERS the Clerk of the Court to reassign this case to a District Judge. The undersigned further  
20 RECOMMENDS that the newly assigned judge remand the case to the Santa Clara County  
21 Superior Court. Any party may serve and file objections to this Report and Recommendation  
22 within fourteen days after being served. Fed. R. Civ. P. 72.

23 **SO ORDERED.**

24 Dated: April 24, 2014

25   
26 HOWARD R. LLOYD  
27 UNITED STATES MAGISTRATE JUDGE  
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1 5:14-cv-01842-HRL Notice has been electronically mailed to:

2 Daniel Thomas Paris parislaw1@msn.com

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4 5:14-cv-01842-HRL Notice sent by U.S. Mail to:

5 Reuben Beronilla  
6 2904 Winwood Way  
7 San Jose, CA 95148

8 Maria Beronilla  
9 2904 Winwood Way  
San Jose, CA 95148

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11 United States District Court  
12 Northern District of California  
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